

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN

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U.S. DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN  
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UNITED STATES OF AMERICA,

Plaintiff,

v.

WALNUTDALE FARMS, INC., a  
Michigan Corporation: RALPH  
LETTINGA; KEVIN LETTINGA,

Defendants.

Civil Action No. 1:02 CV 0700

COMPLAINT

The United States of America ("United States"), by the authority of the Attorney General of the United States and through its undersigned counsel, acting at the request and on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), files this Complaint and alleges as follows:

NATURE OF ACTION

1. This is a civil action brought pursuant to Sections 309(b) and (d) of the Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977 and the Water Quality Act of 1987 ("Clean Water Act or CWA"), 33 U.S.C. §1319(b) and (d), for declaratory relief, injunctive relief and the

assessment of civil penalties against defendants Walnutedale Farms, Inc., Ralph Lettinga, and Kevin Lettinga (hereinafter collectively "Defendants"), for violations of Section 301(a) of the Clean Water Act, 33 U.S.C. §1311(a), for the unpermitted and illegal discharge of pollutants to waters of the United States.

#### **JURISDICTION, VENUE AND INTERVENTION**

2. Authority to bring this action is vested in the Department of Justice by 28 U.S.C. §§516 and 519 and Sections 309 and 506 of the Clean Water Act, 33 U.S.C. §§1319 and 1366.

3. This Court has jurisdiction over the subject matter of this action under 28 U.S.C. §§1331, 1345 and 1355, and under Section 309(b) of the Clean Water Act, 33 U.S.C. §1319(b).

4. Venue is proper in the Western District of Michigan pursuant to 28 U.S.C. §§1391(b) and (c) and 1395(a), and Section 309(b) of the Clean Water Act, 33 U.S.C. §1319(b), because it is the judicial district in which the Defendants are located and in which the alleged violations occurred.

## **PARTIES**

5. Upon information and belief, Defendant Walnutdale Farms, Inc. is a Michigan corporation engaged in the business of dairy farm operations in Michigan with its principal place of business at 4309 14<sup>th</sup> Street, Wayland, Michigan.

6. Walnutdale Farms, Inc. is a "person" within the meaning of Section 502(5) of the Clean Water Act, 33 U.S.C. §1362(5).

7. Upon information and belief, Defendant Ralph Lettinga owns and operates, and otherwise exercises control over, the Walnutdale Farms, Inc. dairy farm located at 4309 14<sup>th</sup> Street, in Wayland, Michigan.

8. Ralph Lettinga is a "person" within the meaning of Section 502(5) of the Clean Water Act, 33 U.S.C. §1362(5).

9. Upon information and belief, Defendant Kevin Lettinga operates, and otherwise exercises control over, the Walnutdale Farms, Inc. dairy farm located at 4309 14<sup>th</sup> Street, in Wayland, Michigan.

10. Kevin Lettinga is a "person" within the meaning of Section 502(5) of the Clean Water Act, 33 U.S.C. §1362(5).

## STATUTORY REQUIREMENTS - THE CLEAN WATER ACT

11. Section 301(a) of the Clean Water Act, 33 U.S.C. §1311(a), prohibits the "discharge of pollutants" by any person into the navigable waters of the United States except in compliance with that section and, inter alia, a National Pollutant Discharge Elimination System ("NPDES") permit issued pursuant to Section 402 of the Clean Water Act, 33 U.S.C. §1342.

12. "Discharge of pollutants" means any addition of any pollutant to navigable waters from any point source, Section 502(12), 33 U.S.C. §1362(12).

13. "Pollutants" are defined by the Clean Water Act to include any biological materials and any industrial, municipal, and agricultural wastes discharged to waters of the United States, Section 502(6), 33 U.S.C. §1362(6).

14. Section 502(14) of the Clean Water Act, 33 U.S.C. §1362(14), defines a "point source" to include a "concentrated animal feeding operation . . . from which pollutants are or may be discharged."

15. Section 402(a) of the Clean Water Act, 33 U.S.C. §1342(a), provides that the Administrator of EPA

("Administrator") may issue an NPDES permit which authorizes the discharge of any pollutant directly into navigable waters of the United States, but only in compliance with the applicable requirements of Section 301 of the Clean Water Act, 33 U.S.C. §1311, and such other conditions as the Administrator determines are necessary to carry out the provisions of the Clean Water Act.

16. Section 402(b) of the Clean Water Act, 33 U.S.C. §1342(b), authorizes the Administrator to approve a State to administer the NPDES permit program where the State demonstrates its program meets the requirements of section 402(b) of the Clean Water Act. On October 17, 1973, EPA authorized Michigan to administer the NPDES program in its state.

17. Section 402(i) of the Clean Water Act, 33 U.S.C. §1342(i), provides that nothing in section 402 limits the authority of the Administrator to take action pursuant to section 309 of the Clean Water Act, 33 U.S.C. §1319.

18. Section 309(b) of the Clean Water Act, 33 U.S.C. §1319(b), authorizes the Administrator to commence a civil action for appropriate relief, including a permanent or temporary injunction, when any person is in violation of,

inter alia, Section 301 of the Clean Water Act, 33 U.S.C. §1311, or violates any permit condition or limitation implementing, inter alia, Sections 301, 308 or 402 of the Clean Water Act, 33 U.S.C. §§1311, 1318 or 1342, in a permit issued under section 1342 by the Administrator or by a State under an approved permit program.

19. Pursuant to Section 309(d) of the Clean Water Act, 33 U.S.C. 1319(d), Defendants are liable for civil penalties of not more than \$25,000 per day for violations of the CWA, including inter alia, Section 301 of the CWA, 33 U.S.C. §1311, that occurred prior to January 30, 1997, and, pursuant to the Debt Collection Improvement Act of 1996 ("DCIA"), and the subsequent Civil Monetary Penalty Inflation Rule, 61 Fed. Reg. 69,360 (December 31, 1996), up to \$27,500 per day per violation for violations occurring on or after January 30, 1997.

#### **GENERAL ALLEGATIONS**

20. Defendants own and operate the Walnutdale Farms dairy farm (hereinafter the "Walnutdale facility" or "facility") located at 4309 14<sup>th</sup> Street, Wayland, Michigan.

21. The Walnutdale facility is comprised of, inter alia, 6 free stall barns containing a total of 1,100 free-

stalls, a milking parlor, silage and feed bunkers, several manure storage structures, a slurry store, office space and machine sheds, and gravel roadways that connect these buildings and structures within the facility.

22. The Walnutedale facility is built on a hummock, and the gravel roadways throughout the facility drain to the north and south of the facility into an unnamed farm drain, hereinafter referred to as Lettinga Drain. The Lettinga Drain collects storm water from the northern and southern ends of the Walnutedale facility, flows underneath and through the farm, and discharges to Red Run Drain ("Red Run").

23. Lettinga Drain and Red Run are tributaries of the Little Rabbit River, which flows into the Rabbit River, which in turns flows into the Kalamazoo River. The Kalamazoo River is a major natural navigable-in-fact waterway used in interstate commerce which flows for miles before emptying into Lake Michigan.

24. Dairy cattle at the Walnutedale facility are confined and fed in the free stall barns three hundred and sixty five (365) days a year, and are walked several times a day to the milking parlor for milking. Manure accumulated in the free stall barns is scraped into pits at the end of the barns and

ultimately is land applied.

25. Cattle at the Walnuthdale facility do not travel under enclosed walkways to access the milking parlor, but are walked along the open gravel roadways. Manure and urine dropped by the cattle are deposited on these roadways and picked up in stormwater. Facility traffic such as tractors, feed trucks and carts entering and leaving the barns, as well as equipment used to scrape manure in the barns, also deposit feed and manure as they travel along the open gravel roadways. Such feed and manure are also ultimately picked up in stormwater.

26. A portion of silage leachate and contaminated runoff from the silage bunker also is discharged to the roadway and drains to the Lettinga Drain. Runoff from silage storage flows across a roadway and a portion is captured in a small runoff detention facility. The remainder of the runoff flows in the roadway and ultimately to Lettinga Drain.

27. During periods of snowfall, snow, which is contaminated with the manure, urine, silage and feed deposited in the roadways, is plowed to lower areas off the roadways to the north and south of the dairy and is carried off in stormwater runoff or snow melt into the Lettinga Drain and

from there into Red Run.

28. The Walnutdale facility discharges excess non-contact cooling water from its milk coolers to a tile which discharges to the Lettinga Drain and from there to Red Run.

29. On information and belief, the Walnutdale facility also disposes of its animal wastes through land application to Walnutdale's nearby fields.

30. The animal wastes and contaminated stormwater described above in paragraphs 24 through 29 are pollutants as defined by Section 502(a) of the Clean Water Act.

31. The Walnutdale facility has not obtained an NPDES permit to authorize any of the discharges described in paragraphs 24 through 30.

32. While a portion of contaminated runoff from the silage bunker is captured and contained by the Walnutdale facility, the facility does not have sufficient storage capacity to contain contaminated discharges that occur in the event of less than a 25 year/24 hour storm event.

33. On January 31, 2001, EPA conducted an inspection

of the Walnutdale facility. During that inspection, EPA inspectors observed that the facility housed approximately 925 mature dairy cattle, milking and dry, in free stall barns. The Walnutdale facility also contained 175 additional free stalls for a combined capacity of 1100 free stalls.

34. During the January 31, 2001 inspection, EPA representatives observed unpermitted discharges of contaminated runoff flowing from the facility's gravel roadway to an area south of the facility's garage and subsequently to the Lettinga Drain. EPA representatives also observed silage contaminated runoff draining to this roadway. EPA representatives also observed that traffic on the facility's gravel roadways, such as tractors and feed wagons, track this contaminated runoff and other contaminants to other parts of the roadway where it is or can be discharged to waters of the United States.

35. During the January 31, 2001 inspection, EPA collected samples from Lettinga Drain at the culvert at 14<sup>th</sup> Street from where it flows into Red Run.

36. Analysis of samples from the January 31, 2001 inspection show the following concentrations of pollutants in Lettinga Drain water:

Carbonaceous Biochemical	21 mg/l
Oxygen Demand (CBOD)	
Total Suspended solids (TSS)	100 mg/l
Nitrate/Nitrogen	1.64 mg/l
Ammonia Nitrogen (NH3)	7.79 mg/l
Total Kjeldahl Nitrogen (TKN)	79 mg/l
Total Phosphorous (P)	3.61mg/l

These sample results demonstrate that pollutants are being discharged from the Walnutdale facility into Lettinga Drain and subsequently to Red Run.

37. On February 26, 2001, USEPA issued an Administrative Order ("AO") (Docket Number: V-W-01-AO-03) to the Defendants pursuant to section 309 of the Clean Water Act, 33 U.S.C. §1319, for unpermitted illegal discharges in violation of the Clean Water Act. Among other things, the AO required the Defendants to immediately cease and desist all unauthorized discharges. It also required the Defendants to prepare and submit a plan for complying with the prohibition on land application of manure into frozen or snow-covered ground, except in compliance with a Comprehensive Nutrient Management Plan ("CNMP"). The Defendants were required, within 90 days of receipt of the AO, to submit a CNMP for the management and utilization of all wastes produced at the dairy including manure, wastewater, non-saleable milk, waste feed and silage, silage leachate, and dead animals. Within 120 days of receipt of the AO, the Defendants were required to prepare and submit

a Storm Water Pollution Prevention Plan. Other best management practices were also required by the AO. Finally, the Defendants were required to apply to the State of Michigan for an NPDES permit.

38. To date, the Defendants have not complied with the terms of the February 26, 2001 AO issued by EPA.

39. The State of Michigan also has documented a long history of illegal discharges by the Defendants. On July 10, 1992, an investigator from the Michigan Department of Natural Resources (MDNR) visited the facility in response to a citizen complaint and observed manure running into the Red Run from a corrugated metal tile east of 14<sup>th</sup> Street, turning the water in Red Run black and septic. Defendant Kevin Lettinga told the State investigator that the source of this discharge was overflow manure from the slurry store connected to the tile that had been ongoing for two months.

40. On April 14, 1993 MDNR representatives again visited the facility and observed manure water in the Lettinga Drain. Defendant Kevin Lettinga told MDNR staff that an overflow of manure water had occurred two to three weeks earlier. By letter dated April 19, 1993 MDNR directed Defendants to devise a management plan to prevent discharges of farm waste to Red

Run.

41. On October 3, 1997 the State of Michigan Surface Water Quality Division ("SWQD") staff investigated the facility and observed silage leachate discharging from the facility, and manure waste from a feedlot and an equipment wash area discharging, into Lettinga Drain. SWQD staff observed impacts on Red Run including discoloration, bacterial slimes, surface scum and septic odors. Acute impacts were observed extending two to three miles from the discharge point.

42. Also on October 3, 1997 SWQD staff collected water samples from Lettinga Drain and from Red Run both upstream and downstream of the Lettinga Drain. The concentrations of ammonia and phosphorous in samples collected from Lettinga Drain were hundreds of times greater than in the samples collected in Red Run upstream of Lettinga Drain. The results for samples collected from Red Run downstream of Lettinga Drain were more than twenty times higher for ammonia and more than nine times higher for phosphorous than the samples collected from Red Run upstream of Lettinga Drain.

43. The Michigan Department of Environmental Quality ("MDEQ") and the Defendants entered into an ACO dated October

16, 1998 pursuant to Part 31, Water Protection, of the Michigan Natural Resources and Environmental Protection Act (Act 451), as amended, MCL 324.3101 et seq., requiring the facility to undertake specified actions to prevent future discharges of silage leachate and animal wastes to waters of the State of Michigan.

44. On or about November 24, 1999, the Walnutdale facility discharged manure into Lettinga Drain. Defendants allowed manure runoff from the facility's barns and walkways, and overflow from a slurry store, to flow into Lettinga Drain, turning the Drain and waterways into which it flowed turbid and smelling of animal wastes.

45. On October 12, 2000, MDEQ received a complaint alleging continued illegal discharges from the Walnutdale facility. MDEQ staff investigated on October 13, 2000 and discovered liquid pooled and flowing around a berm at the facility that the MDEQ staff determined could be expected to wash into the Red Run as soon as it rained. MDEQ staff also observed an unarmored livestock crossing on Red Run adjacent to the Walnutdale pasture, and observed that the water downstream of this crossing was turbid while the water upstream was clear.

46. On October 18, 2000, MDEQ inspected the Walnutdale facility and observed and/or discovered numerous violations of the requirements of the October 16, 1998 ACO, including without limitation a failure to upgrade the facility's Waste Management System Plan as a result of an increase in herd size, failure to conduct regular facility inspections, failure to maintain records, and continued runoff from manure handling operations, a sand bedding stockpile, and dead cattle into the facility's drainageway.

47. 40 C.F.R. § 122.23(b) defines a "concentrated animal feeding operation" that must obtain an NPDES permit to authorize discharges as any "lot or facility . . . where: i) animals have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period, ii) crops, vegetation forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility," and iii) in the case of dairy farms, more than 700 mature dairy cattle (whether milked or dry cows) are maintained at the site, provided however, that a dairy is not a CAFO if it discharges only in the event of a 25-year, 24-hour storm event.

48. The Walnutdale facility confines and feeds at least 925 mature dairy cattle (dry or milked).

49. Dairy cattle at the Walnutdale facility are stabled, confined, fed and maintained year round, and thus for a total of more than 45 days in any 12-month period.

50. Crops, vegetation forage growth, or post-harvest residues have not been, and are not, sustained in the normal growing season over any portion of the Walnutdale facility.

51. The Walnutdale facility does not have sufficient capacity to contain contaminated discharges that occur in the event of precipitation of less than a 25-year, 24-hour storm event.

52. The Walnutdale facility is a "concentrated animal feeding operation" ("CAFO") as defined by 40 C.F.R. §122.23(b).

53. The manure, silage, feed, and dairy farm waste discharged from the Walnutdale farm are "pollutants" as that term is defined at Section 502(6) of the Clean Water Act, 33 U.S.C. § 1362(6).

54. Defendants have never applied for or obtained an NPDES permit for discharges of wastewaters from the Walnutdale

facility.

55. The Walnutedale facility has discharged dairy farm waste to navigable waters, including the Lettinga Drain and Red Run, tributaries of the Rabbit River, which flows into the Kalamazoo River. None of these discharges were permitted or authorized under any NPDES permit.

56. The Lettinga Drain, the Red Run Drain, the Rabbit River and the Kalamazoo River, are all "navigable waters" within the meaning of Section 502(7) of the Clean Water Act, 33 U.S.C. §1362(7).

#### **FIRST CLAIM FOR RELIEF**

57. Paragraphs 1 through 56 are realleged and incorporated herein by reference.

58. Defendants have discharged, and may discharge in the future, dairy farm wastes which are pollutants from the Walnutedale facility into navigable waters without the authorization of an NPDES permit.

59. The unpermitted discharges include, without limitation, the unpermitted discharges identified in paragraphs 24 through 46.

60. Each day of each unpermitted discharge of pollutants such as the dairy farm wastes described above is a separate violation of Section 301 of the Clean Water Act, 33 U.S.C. §1311.

61. Pursuant to Section 309(b) and (d) of the Clean Water Act, 33 U.S.C. § 1319(b) and (d), Defendants are liable for injunctive relief and civil penalties not to exceed \$27,500 per day for each violation.

62. Upon information and belief, unless enjoined by the Court, Defendants may continue to discharge pollutants to navigable waters without a permit in violation of Section 301 of the Clean Water Act, 33 U.S.C. § 1311.

#### **SECOND CLAIM FOR RELIEF**

63. Paragraphs 1 through 62 are realleged and incorporated herein by reference.

64. Section 301(a) of the Clean Water Act, 33 U.S.C. §1311(a), prohibits the discharge of pollutants from the Walnutdale facility except in accordance with the terms and conditions of an NPDES permit issued pursuant to Section 402 of the Clean Water Act, 33 U.S.C. §1342.

65. Section 402(b) of the Clean Water Act, 33 U.S.C.

§ 1342(b), authorizes EPA to approve a state to administer the NPDES permit program in lieu of the federal government where the State demonstrates that it meets the requirements for approval specified in section 402(b), including the authority to issue permit to point sources for the discharge of pollutants to navigable waters in the State. On October 17, 1973 EPA approved the State of Michigan to administer the NPDES program in its State.

66. Section 3112(1) of the Michigan Natural Resources and Environment Protection Act provides in relevant part that "A person shall not discharge any waste or waste effluent into the waters of the state unless the person is in possession of a valid permit from the department [of environmental quality.]" Act 451 of 1994, as amended, Part 31, M.C.L. §3101 et seq., §3112(1).

67. Any person who discharges or proposes to discharge pollutants to waters of the United States is required to apply for a permit in advance of the actual discharge. 40 C.F.R. §122.21(a) and (c); Michigan R. 323.2106, Rule 1106(2) and R. 323.2189(2)(a) (incorporating by reference 40 C.F.R. §122.21(c)(1)(1990).)

68. A "point source" subject to NPDES and Michigan

permit requirements is defined as "any discernable, confined, and discrete conveyance, including but not limited to any . . . concentrated animal feeding operation ["CAFO"] . . . from which pollutants are or may be discharged." Section 502(14) of the CWA, 33 U.S.C. § 1362(14); Michigan R. 323.2104.

69. The Walnutdale facility is a CAFO.

70. The Walnutdale facility was required to apply for an NPDES permit. 40 C.F.R. §122.21(a) and (c); Michigan R. 323.2106, Rule 1106(2) and R. 323.2189(2)(a) (incorporating by reference 40 C.F.R. §122.21(c)(1)(1990)).

71. The Defendants' failure to apply for an NPDES permit for the Walnutdale facility constitutes a violation of the Clean Water Act for each day that Defendants failed to apply for such permit.

72. Pursuant to Section 309(b) and (d) of the Clean Water Act, 33 U.S.C. § 1319(b) and (d), Defendants are liable for injunctive relief and civil penalties not to exceed \$27,500 per day for each violation.

73. Upon information and belief, unless enjoined by the Court, Defendants may continue to discharge pollutants to navigable waters without a permit in violation of Section 301

of the Clean Water Act, 33 U.S.C. § 1311.

### THIRD CLAIM FOR RELIEF

74. Paragraphs 1 through 73 are realleged and incorporated herein by reference.

75. On February 26, 2001 EPA issued an Administrative Order ("AO") to the Defendants pursuant to Section 309(a) of the Clean Water Act.

76. On March 1, 2001 the AO was returned to the EPA with a cover letter and several attachments. The original of the order and the inspection report were stamped "ACCEPTED FOR VALUE; THIS PROPERTY EXEMPT FROM LEVY. PLEASE ADJUST THIS ACCOUNT; AND RELEASE THE PROCEEDS, PRODUCTS, ACCOUNT AND FIXTURES AND RELEASE THE ORDER OR ORDERS OF THE COURT TO ME IMMEDIATELY." The response was signed Kevin-Ralph Lettinga.

77. The February 26, 2001 AO requires the Defendants to, inter alia: (1) immediately cease and desist all unauthorized discharges; (2) apply for an NPDES permit for their CAFO operation; (3) prepare a Comprehensive Nutrient Management Plan for managing wastes at the Walnutdale facility; and (4) implement other best management practices as necessary to insure that pollutant discharges from the

facility are minimized.

78. Walnutdale remains in violation of the February 26, 2001 AO.

79. Pursuant to Section 309(b) and (d) of the Clean Water Act, 33 U.S.C. § 1319(b) and (d), Defendants are liable for injunctive relief and civil penalties not to exceed \$27,500 per day for each day it continues to violate the February 26, 2001 AO.

80. Upon information and belief, unless subject to injunctive relief to compel compliance with the terms of the AO, Defendants may continue to discharge pollutants to navigable waters without a permit in violation of Section 301 of the Clean Water Act, 33 U.S.C. § 1311.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, the United States of America, requests that the Court enter judgment on behalf of the United States and against Defendants as follows:

A. Issue a declaratory judgment that Defendants have violated and continue to violate Sections 301 and 402 of the Act, 33 U.S.C. §§1311 and 1342, by discharging pollutants to "navigable waters" without a permit;

B. Permanently enjoin Defendants pursuant to Section 309(b) of the Clean Water Act, 33 U.S.C. § 1319(b), as follows:

1. Order Defendants to submit an NPDES permit application to the State of Michigan;
2. Prohibit the discharge by Defendants of any pollutant from the Walnutdale facility to navigable waters except in accordance with an NPDES permit;
3. Order Defendants to institute corrective measures and undertake a program of compliance to achieve permanent, consistent compliance with the Clean Water Act, the regulations promulgated thereunder, the Administrative Order issued by EPA on February 26, 2001, and any NPDES permit issued for the Walnutdale facility.

C. Order such other injunctive relief as the Court deems appropriate to bring the Walnutdale facility into compliance with the Clean Water Act and the Administrative Order issued by EPA on February 26, 2001;

D. Pursuant to Section 309(d) of the Act, 33 U.S.C. §1319(d), assess civil penalties against Defendants in an amount

not to exceed \$27,500 per day for each day of each violation of the Clean Water Act and the regulations promulgated thereunder or of the Administrative Order issued by EPA on February 26, 2001;

E. Award the United States its costs in this action; and

F. Grant the United States such other relief as the Court deems appropriate.

Respectfully submitted,

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